IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.688 OF 1985

1. Lila Manilal Patel,)
of Bombay, Indian Inhabitant,)
Residing at 67/C, Walkeshwar Road,)
Bombay 400 006.)

2. Ashok Manilal Patel,)
of Bombay, Indian Inhabitant,)
Residing at 67/C, Walkeshwar Road,)
Bombay 400 006.)

3. Vedica Manilal Patel, a Minor under)
the Age of 18 years through her)
Next Friend and Natural Guardian)
Manilal Zaverbhai Patel residing at)
67/C, Walkeshwar Road,)
Bombay 400 006.)..Plaintiffs

Versus

Gammon India Limited, a Public Limited)
Company registered under the Indian)
Companies Act having its Registered)
Office at Gammon House, Veer Savarkar)
Marg, Post Box No.9129, Prabhadevi,)
Bombay 400 014.)..Defendants

Shri Shekhar Shetye with Ms. Nina Kapadai i/by Pandya Gandhi & Co for the Plaintiffs.

None for the Defendants.

CORAM : ABHAY S.OKA, J.
DATED : AUGUST 06, 2007.

ORAL JUDGMENT:

1. The Plaintiffs have filed this suit for declaration that there is a valid and binding agreement for sale of the property described in Exhibit ‘A’ to the plaint. The second prayer in the suit is for specific

performance of the suit agreement for sale as set out in the plaint. There is also a prayer for decree directing the Defendants to execute a Deed of Conveyance in favour of the Plaintiffs.

2. The second Plaintiff is the son of the first Plaintiff. The third Plaintiff is the daughter of the first Plaintiff. The third Plaintiff was minor at the time of institution of the suit and now she has attained majority. According to the case of the Plaintiffs in or about January 1971 the Defendants agreed to sale to the first Plaintiff and the first Plaintiff agreed to purchase the suit property more particularly described in Exhibit 'A' at and for the price of Rs.6 lakhs. According to the case of the Plaintiffs it was further agreed between the first Plaintiff and the Defendants that the Defendants would make out marketable title to the suit property free from all encumbrance. The first Plaintiff and the Defendants were to bear in equal shares the costs of stamp duty, registration charges and the brokerage etc. According to the case of the Plaintiffs it was agreed that the Defendants will convey the suit property either to the first Plaintiff or to her children or to her nominee/nominees.

3. Pursuant to the said agreement, on or about 23rd

April, 1977 the Plaintiffs were put in physical possession of the suit property and since then the Plaintiffs have been in possession of the property and have been paying all the outgoings in respect of the said property.

4. According to the case of the Plaintiffs, the first Plaintiff paid total sum of Rs.2,60,001/- by six different cheques drawn in favour of the Defendants on Mercantile Bank, Mumbai. The particulars of the said cheques have been incorporated in paragraph No.4 of the plaint.

5. By letter dated 29th April, 1971 addressed to the Defendants, the first Plaintiff after recording the aforesaid facts agreed to pay balance amount of Rs.3,40,000/- by monthly instalments in the manner more particularly set out in the said letter. According to the case of the Plaintiffs, from May 1971 onwards the first Plaintiff made payment of further amount of Rs.3,62,230/-. Thus, according to the Plaintiffs, apart from the entire consideration of Rs.6 lakhs, a sum of Rs.22,204/- was paid by the first Plaintiff to the Defendants. The case of the Plaintiffs is that the said amount was paid on account of share of the Plaintiffs in the stamp duty, registration charges etc. It is stated

that the total stamp duty and registration charges will be Rs.95,200/-. It is averred in the plaint that the Plaintiffs are ready and willing to pay the balance amount.

6. According to the case of the Plaintiff by letter dated 10th June, 1972 sent by the first Plaintiff's attorneys, the Defendants attorneys were called upon to forward title deeds relating to the said property for the perusal of the first Plaintiff. By further letter dated 24th July, 1972 sent by the attorneys of the first Plaintiff to the attorneys of the Defendants it was recorded that the entire consideration was already paid. It is stated that from 09th August, 1972 to September, 1973 there was a correspondence between the attorneys of the first Plaintiffs and the attorneys of the Defendants. According to the case of the Plaintiffs, the attorneys of the Defendants did not forward the documents of title. By the first Plaintiff's Advocates letter dated 20th November, 1973 addressed to the Defendants attorneys, the first Plaintiff agreed to bear the additional stamp duty and registration charges.

7. Alongwith letter dated 26th September, 1972 the Advocate of the first Plaintiff forwarded to the Defendants' attorneys a draft Deed of Conveyance for

approval. The said draft provided that the conveyance shall be executed in the name of second and third Plaintiffs. It is stated that the Defendants delayed the execution of the conveyance. Only in September 1973, the attorneys of the Defendants delivered the original title deeds relating to the suit property for enabling the first Plaintiff to investigate the title. From November 1973 to March 1975 attorneys of the first Plaintiff repeatedly called upon the attorneys of the Defendants to answer the requisitions on the Defendants' title to the suit property. The requisitions were answered by the Defendants' attorneys letter dated 01st April, 1975.

8. By letter dated 06th June, 1975 addressed by the Defendants' attorneys it was alleged that the first Plaintiff had failed to send the draft of the conveyance. The said letter was replied on behalf of the Plaintiffs by their attorneys on 18th June, 1975 by pointing out that a draft conveyance was already forwarded as far back as on 29th September, 1972 for their approval. By the said letter the attorneys of the Defendants were called upon to approve the said draft.

9. On or about 15th January, 1977 a meeting was held between the first Plaintiff's representative and

the Defendants' attorneys. At that time the Defendants' attorneys advised the first Plaintiff's representatives not to complete the sale in view of the provisions of the Urban Land (Ceiling and Regulation) Act, 1976. Thereafter there was again a prolonged correspondence between the attorneys of the parties. Ultimately by letter dated 24th January, 1979 the first Plaintiff forwarded to the Defendants attorneys copies of the engrossed Deed of Conveyance to enable the Defendants to obtain a certificate as required under section 230A of the Income Tax Act, 1961.

10. It is alleged in the plaint that from September 1979 to January 1980 the Defendants forwarded necessary forms and applications which were required to be filed by the first Plaintiff for obtaining the consent of the competent authority under the said Act of 1976. Though the said forms and applications were duly filled in by the first Plaintiff and forwarded to the Defendants' attorney in January 1980, the Defendants neglected to obtain the consent of the competent authority. The Defendants also did not inform the Plaintiffs whether a certificate under section 230A of the Income Tax Act, 1961 was obtained by the Defendants.

11. Sometime in August-September 1980 there were

discussions between the parties. Between May 1981 and December 1981 there was exchange of correspondence between the attorneys of the parties. Alongwith letter dated 06th February, 1984 sent by the first Plaintiff's attorneys addressed to the attorneys for Defendants two copies of the draft indenture of conveyance were again forwarded for the approval of the Defendants and the Defendants were called upon to approve draft. Form No.8 required to be filed before the competent authority under the said Act of 1976 was also forwarded alongwith the said letter. As there was no response from the Defendants the present suit has been filed.

12. The Defendants have not filed any written statement. The Plaintiffs have examined the first Plaintiff as a witness by filing affidavit-in-lieu of examination in chief. The second witness examined by the Plaintiffs is Mr Vishram Morarji Parmar by filing an affidavit-in-lieu of examination in chief. When the suit appeared on 03rd March, 2006 for recording of evidence, the examination-in-chief of both the witnesses was recorded. However, none appeared for the Defendant and hence, the cross examination has been closed. The Plaintiffs have placed on record the original documents on which they are placing reliance.

13. The evidence of the first Plaintiff has gone unchallenged. The documents produced by the Plaintiffs in support of their case have been duly proved by the the first Plaintiff in her deposition. The affidavit in lieu of examination in chief of other witness Shri Vishram has also gone unchallenged. In paragraph No.32 of the affidavit in lieu of evidence of the first Plaintiff she stated that the second Plaintiff has been nominated by her as the purchaser.

14. I have perused the original documents which are produced alongwith compilation. The Plaintiffs have placed on record the stamped receipts executed by the Defendants for various payments made by them as set out in the plaint. The office copy of letter dated 29th April, 1971 records the fact that the first Plaintiff received possession of the suit premises on 23rd April, 1971 in presence of Seth Shri M.J.Shah. The averments made in the plaint have been proved by the said documents placed on record. Thus, the Plaintiffs have established that the Defendants have agreed to sale the suit property for the total consideration of Rs.6 lakhs and the entire consideration has been paid. The Plaintiffs have agreed to pay 1/2 of the amount payable towards stamp duty and registration charges and on that count a sum of Rs.22,204/- has been already paid to the

Defendants. The Plaintiffs have averred in the plaint that they are ready and willing to pay their share of the stamp duty and registration charges.

15. Hence, a case is made out by the Plaintiffs for passing a decree in their favour. However, the Plaintiffs will have to pay one half share in the stamp duty and registration charges payable on the conveyance. The Plaintiffs will be naturally entitled to adjustment of sum of Rs.22,204/- which is already paid to the Defendants towards the said amount as held earlier.

16. The Plaintiffs are entitled to a decree in terms of prayer clauses (a), (b), (c) and (f).

17. Hence, the suit is decreed in terms of prayers (a), (b), (c) and (f) with a modification that the conveyance shall be executed in the name of the second Plaintiff and the conveyance shall be executed subject to the Plaintiffs paying their one half share in the stamp duty and registration charges payable on the conveyance.

18. The decree in terms of prayer clause (f) will operate, provided the decree in terms of prayers (b) and (c) remains unexecuted for a period of six months from

today.

19. The Defendants are directed to pay costs of the suit to the Plaintiffs.

20. Certified copy is expedited.

JUDGE